

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)

Emily E. Geier, P.C. (admitted *pro hac vice*)

Derek I. Hunter (admitted *pro hac vice*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

joshua.sussberg@kirkland.com

emily.geier@kirkland.com

derek.hunter@kirkland.com

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

Co-Counsel for Debtors and

Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**DEBTORS' APPLICATION IN LIEU OF MOTION IN SUPPORT OF
ENTRY OF STIPULATION AND CONSENT ORDER
APPROVING LEASE TERMINATION AGREEMENT
WITH G&I IX PRIMROSE MARKETPLACE LLC**

TO: THE HONORABLE JUDGE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY JUDGE:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned co-counsel, Cole Schotz P.C., and Kirkland & Ellis LLP and Kirkland & Ellis International LLP, respectfully state the following in support of this application (the “Application”), pursuant to D.N.J. LBR 9021-1(b), seeking the approval and entry of the proposed *Stipulation and Consent Order Approving Lease Termination Agreement with G&I IX Primrose Marketplace LLC* (the “Proposed Stipulation”),² a copy of which is attached hereto as **Exhibit 1**, and respectfully state as follows:

1. On April 23, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 24, 2023, the Court entered an order [Docket No. 75] authorizing procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). On May 5, 2023, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 218].

2. As of the Petition Date, G&I IX Primrose Marketplace LLC (“Landlord”) and one of the Debtors were parties to an unexpired lease of nonresidential real property (the “Lease”) located at 3308 South Glenstone Avenue, Springfield MO (Store #490) (the “Premises”).

3. Following the Petition Date, the Debtors and Landlord negotiated and entered into a Lease Termination Agreement, the form of which is annexed as Exhibit “A” to the Proposed

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Proposed Stipulation.

Stipulation (the “Lease Termination Agreement”). Among other things, the Lease Termination Agreement, provides as follows:³

- (a) upon the Termination Date, the Lease shall be rejected and terminated, and all of the Debtors’ interest therein and in the Premises shall be transferred to Landlord;
- (b) as consideration for the rejection and termination of the Lease, Landlord shall (i) pay Debtor the sum of \$12,500.00, (ii) waive all pre-and post-petition claims of Landlord under the Lease, including, without limitation, all rent and other obligations due for the period from and after August 1, 2023, and (iii) waive any claim for damages arising from the rejection of the Lease under 11 U.S.C. § 502(b)(6).
- (c) Landlord and Debtors agree to mutually release and waive claims against the other to the extent set forth in the Lease Termination Agreement; and
- (d) for the abandonment of any FF&E or other personal property in the Premises as of the Termination Date to Landlord.

4. The Landlord and the Debtors respectfully request the Court’s consideration as soon as permitted.

5. The Debtors submit that the Proposed Stipulation is in the best interest of the Debtors and their estates.

6. This Application is submitted pursuant to D.N.J. LBR 9021-1 (b) in lieu of a motion in support of the Debtors’ request that the Court enter the Proposed Stipulation as presented.

7. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Stipulation, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

³ The terms described in this paragraph are for illustrative purposes only. To the extent there is any inconsistency between the terms set forth in the Lease Termination Agreement and the terms described herein, the Lease Termination Agreement shall control in all respects.

Dated: August 18, 2023

/s/ Michael D. Sirota

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)

Emily E. Geier, P.C. (admitted *pro hac vice*)

Derek I. Hunter (admitted *pro hac vice*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: josuha.sussberg@kirkland.com
emily.geier@kirkland.com
derek.hunter@kirkland.com

*Co-Counsel for Debtors and
Debtors in Possession*